IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7902 of 1998

with

SPECIAL CIVIL APPLICATION Nos.
7909,7912,7914,7915,7916,7917,7918,7919,7920,7960,
7961,7962,7963,7964,7966, 7967 and 7968 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

UNION OF INDIA

Versus

KANKUBEN WD/O SARDAR GHISASINGTEJSING

Appearance:

1. Special Civil Application No. 7902 of 1998
MR JC SHETH for Petitioners
RULE UNSERVED for Respondent No. 1, 5
MR PT JASANI for Respondent No. 4

2. Special Civil ApplicationNo 7909 of 1998
MR JC SHETH for Petitioners
RULE UNSERVED for Respondent No. 1, 5
MR PT JASANI for Respondent No. 4

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 04/05/2000

ORAL JUDGEMENT

Learned Advocate Mr. U.M.Shastri appearing on behalf of the petitioners and Learned Advocate Mr.P.T.Jasani appearing on behalf of the respondent. Heard the Learned Advocates. In all petitions, rule is issued and ad interim relief in terms of para-27 (b) granted by this Court on 12th October, 1999.

In the present petition, the order passed by the Labour Court, Ahmedabad (Center) in Recovery Application filed by the respondent under Section 33(c)(2) of the Industrial Disputes Act, 1947.

The brief facts of the Recovery Application is that applicants are working at Center Loco shed, Kankaria Western Railway, Baroda Division running staff having duty as a Center from Sabarmati Traffic Yard to Railway Engine from 6.00 a.m. to 2.00 p.m. and from 2.00 p.m. to 10.00 p.m. and from 10.00 p.m. to 6.00 a.m. different shift of having eight hours duty. The headquarter was fixed at Loco Shed, Kankaria and Booking Clerk of Loco shed, Kankaria fixing the duty hours for 24 hours of running staff in respect to their shifts and they were informed by call-boy prior to three hours from actual duty. After receiving the call, the applicants reach to Loco shed, Kankaria in office of T.N.C. and sign the 'on' duty register and thereafter, the applicants started for duty to reach Sabarmati Yard from Kankaria Loco shed to Ahmedabad Railway Statation by walking and from Ahmedabad Station to Sabarmati Station by train and the applicants have to attach with Railway Engine as per booking and they should have to reach the particular Engine which was standing at Sabarmati Yard and they have to reach by walking and after taking the charge of Engine the reliever has been relived by such applicant and after reaching to the Railway Engine and after reliving the reliever, applicant has to perform eight hours duty therefore, a period prior to reach to the Engine at Sabarmati Yard and up to the time of reliving reliever the earlier period was not count 'on' duty which period was considered to be a signing 'on' and signing 'off'. After completion of eight hours duty, a moment reliever reported then by handling over the charge

of such Engine to the reliever then these applicants started walking from Sabarmati Yard to Sabarmati Railway Station and Sabarmati Railway Station started the journey in train up to the Ahmedabad Railway Station thereafter, again the applicants were started running by walking from Ahmedabad Railway Station to Kankaria Loco shed and to sign in office of T.N.C. in 'off' duty register and thereafter, they went to the residence. The applicants case was that petitioners were given 'on' duty and 'off' duty period to such employee considering that period in duty hours and including such period the employee was entitled the over time wages and such over time wages were paid prior to 4th November, 1961 but, such over time was all of sudden stopped by the Additional Mechanical Engineer of Baroda Division Office. Therefore, the employees were approached to the Civil Court in Civil Suit No.731 of 1772 which ultimately rejected by the Civil Court on the ground of jurisdiction and directed to transfer the suit to the Labour Court. Thereafter, before the Labour Court the Recovery Application No. 19 of 1982 was filed by such employee claiming the over time wages on the basis of including the period spent on signing 'on' duty and signing 'off' duty. The such claim of over time wages on an identical case were filed in Recovery Application No. 19 of 1982 was decided by the Labour Court, Ahmedabad on 31st May, 1983 alongwith the applications and granting the claim of over-time wages on such similar claim made by other employees before the Labour Court, Ahmedabad. The petitioner Railway Authority has challenged the said order of Labour Court passed in Recovery Application No. 19 of 1982 dated 31st May, 1983 before this Court being Special Civil Application No. 3203 of 1984 and this Court has rejected the petition on 7th December, 1984 filed by the petitioner Railway Authority.

In the present case of recovery the each employee had asked for over time wages on the same terms and conditions having performed similar type of work and duty. For the period from 1st August, 1964 to 30th April, 1979 the each employee had asked for over time wages for the aforesaid period for the 'on' duty to 'off' duty which considered to be a signing 'on' and signing 'off'. Earlier similar claim of over time wages where made by some of the employees which allowed by the Labour Court and decision of Labour Court confirmed by this Court in Special Civil Application No. 3203 of 1984.

The petitioner has raised contention filing the reply before the Labour Court vide Ex.8 that employees have no preexisting right and the Labour Court has no

jurisdiction to decide the entitlement of over time wages of such employee and therefore, the said Recovery Application is not maintainable in law. It is also pointed out by the petitioner in reply that facts of Recovery Application No. 19 of 1982 are not similar to the present Recovery Application. Before the Labour Court the employees concerned was examined and supported the facts stated in Recovery Application. Thereafter, the petitioner Railway had examined one witness who was H.E.R. Inspector. The said witness deposed before the Labour Court that such employees which recovered as a running staff and they are a category of continuous and also admitted the factual detail from the point of receiving the call from callboy till to sign 'off' duty register by such employee. Thereafter, the said witness of their petitioner Railway was examined by the advocate of respondent. Thereafter, the Labour Court has examined the merits of Recovery Application and the Labour Court has come to the conclusion that facts of Recovery Application No. 19 of 1982 are similar and same to the present facts of Recovery Application. The Labour Court has also considered the contention about preexisting right of employee was raised by the petitioner before this Court in Special Civil Application No. 3203 of 1984 and this Court has rejected such contention on the ground that prior to 1961 each employee was having preexisting right working in running staff. The second contention was raised before the Labour Court about delay in filing Recovery Application and relied upon one decision of this Court reported in 1996 (2) G.L.H. page-161 in case of E.S.I. Scheme v. Natvarlal Shah. The Labour Court has come to the conclusion that petitioner Railway Authority has implemented the earlier order passed by the Labour Court in Recovery Application No. 19 of 1982 and said decision has been confirmed by this Court and detail reasoning given by the High Court and therefore, present Recovery Application is maintainable and there is no barred for limitation. Thereafter, the Labour Court has decided that employee has established preexisting right to receiving overtime wages on the basis of service condition and claiming the period from going to 'on' duty Kankaria Loco Shed to Sabarmati Yard and coming back from Sabarmati Yard to Kankaria Loco shed in T.N.C. office are a working hours of 'on' and 'off' duty which must included in duty hours and working hours and therefore, employees are entitled over time wages. H.E.R. rules also applicable to the employee. The Labour Court has also come to the conclusion that by circular dated 15th November, 1961, the Railway Authority has stopped the time for going and coming in duty in respect to shunter and fireman but, it has not been stopped the over time

wages by such circular and claim of employees based on service condition and also statutory provision and therefore, employees has established preexisting right and therefore, entitle the over time wages from the petitioner Railway Authority and therefore, the Labour Court, Ahmedabad has allowed the claim of each employee which a direction to the Railway Authority to pay such amount of over time wages as claimed by each employee within 30 days of receiving copy of the said order and if, petitioner Railway Authority fails to pay such amount of over time wages within prescribed time limit then petitioner Railway Authority has to pay such amount with 12% interest from the date of order passed by the Labour Court on 30th April, 1998.

The Learned Advocate Mr. Shastri submitted that the Labour Court has no jurisdiction to entertained such application under Section 33 (c)(2) of Industrial Disputes, Act and respondents have no preexisting right to receive some claim of over time wages and Recovery Applications have been filed after the period of more than 10 years to recovery the claim of over time wages.

I have considered the contention raised by the Learned Advocate Mr. Shahstri, the Labour Court has considered the order passed by the Labour Court in Recovery Application No.19 of 1982 in similar claim of over time wages by similar employees performing the same type of work which was allowed by the Labour Court, Ahmedabad and confirmed by this Court in Special Civil Application No. 3203 of 1984. The Labour Court has also considered the reasons given by this Court in above Special Civil Application. The Labour Court has also considered that claim of over time wages based on service condition and statutory provision and therefore, the Labour Court is having jurisdiction under Section 33(c)(2) of the Industrial Disputes Act, 1947. In respect to the detail aspect the view taken by the Apex Court in case of the Central Bank of India Limited v. P.S. Rajgopalan reported in A.I.R. 1964 S.C. page-743 and in case of the Bombay Gas Company Limited v. Gopal Bhiva and Others reported in A.I.R. 1964 S.C. page-752. The above both the decisions of the Apex Court relied by this Court in case of G.S.R.T.C. v. K.M.Shah reported in 1998(2) G.L.H. page-996. The Apex Court has in terms considered the question of limitation under Section 33 (c)(2) in Bombay Gas Company case (Supra) and observed that where the legislature has made no provision for limitation it would not be opened to the Court to introduce any such limitation on ground of fairness or justice the words of Section 33 (c)(2) which plain and

unambiguous and it would be the duty of the Labour Court to give effect to the said provisions without any considering of limitation in the absence of any provision. However, the Labour Court cannot impart any such consideration in dealing with the application made under Section 33 (c)(2) in such cases limitation cannot be introduced by industrial adjudication on academic ground of social justice. Therefore, considering the observations made by the Apex Court in both the cases of same is followed by this Court in G.S.R.T.C. case the contention of limitation raised by Mr. Shastri cannot be accepted.

I perused the entire order passed by the Labour Court. I considered the reasoning given by the Labour Court. The Labour Court has discussed in detail, the working hours and hours for going 'on' duty and coming from duty spent by each employee. The Labour Court has discussed oral and documentary evidence which are on record and relied upon earlier decision of the Labour Court in Recovery Application No. 19 of 1982 and decision of this Court in Special Civil Application No. 3203 of 1984. The Labour Court has rightly appreciated the oral and documentary evidence which are on record and passed a legal, valid and just order while exercising the powers under Section 33 (c)(2) of Industrial Disputes Act, 1947. The Labour Court has jurisdiction to examine the entitlement to receive money from employer. The preexisting right can be based on adjudication settlement and service condition. If, the right to get a particular benefit is there, the application under Section 33 (c)(2) would be maintainable and jurisdiction of the Labour Court will not be barred merely because, employer has denied the same. A person may be entitled to receive money from employer and there may be preexisting right even in the absence of settlement or award. But, when such right is recognise as per service condition. In present case prior to Circular dated 4th November, 1961 the over time wages to such employee were paid by the Railway Authority on the basis of service condition. But, subsequently by one circular issued on 15th November, 1961 the Railway Authority has decided not to give the over time wages to such employee but, it cannot having any effect of having preexisting right of each employee to receive over time wages. According to a right which has been recognised as per service condition of such employee.

Therefore, the Labour Court has not committed any error while passing such order. The Labour Court has not also committed any error either in law or facts. There

is no any infirmity which has been pointed out by Mr.Shastri which required any interference from this Court in exercising the powers under Article 226 and 227 of the Constitution of India. The law is well settled in reported case 1998(1) G.L.R. page-17 and 1998 A.I.R. Supreme Court Weekly page-1840 of the Apex Court and Division Bench of this Court while exercising the powers under Article 226 and 227 cannot Act as an Appellate Authority and cannot have power to reappreciate the evidence led before the Labour Court therefore, according to my opinion, there is no interference is required by this Court and these all petitions are required to be dismissed. Hence, rule is discharged. Ad interim relief granted earlier stands vacated and these all petitions are dismissed. No order as to costs. However, I am directing to the petitioners Railway Authority to implement order passed by the Labour Court, Ahmedabad in Recovery Application dated 30th April, 1998 and pay the amounts to the respondent as directed by the Labour Court within a period of six weeks from the date of receiving certified copy of this order.

Date :04-05-2000 (H.K.RATHOD,J.)

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